IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

JUDGMENT.

(1) S.B.Civil Writ Petition NO.221/2007
Leela Sharma Vs. The State of Raj. & ors.

(2) S.B.Civil Writ Petition NO.222/2007
Banshi Lal Prajapat Vs. The State of Raj. & ors.

Date of Judgment: September 21st, 2007.

PRESENT

HON'BLE MR. PRAKASH TATIA,J.

Mr. Satish Pachori for the petitioners.
Mr. L.R. Mehta, Sr.Advocate and Mr. I.S. Pareek for the respondent No.5.
Mr. R.K. Purohit for applicant-Dhiraj Panwar.
Mrs. R.R. Kanwar,Deputy G.A.

BY THE COURT:

REPORTABLE

S.B. Civil Writ Petition No.221/07 has been filed by Leela Sharma, Ex.Chairperson of the Municipal Board,Rawatbhata to challenge the No Confidence Motion dated 8.1.2007 by which she was unseated from the post of Chairperson, Municipal Board, Rawatbhata.

S.B.Civil Writ Petition No.222/2007 has been preferred by Banshi Lal, Ex-Vice Chairman of the same Municipal Board,

Rawatbhata to challenge the same No Confidence Motion dated 8.1.2007 by which he was removed from the post of Vice Chairman, Municipal Board, Rawatbhata.

Brief facts of the case are that the petitioner of the S.B.Civil Writ Petition No.221/2007 was elected as Chairman of the Municipal Board, Rawatbhata. The petitioner of the S.B.Civil Writ Petition No.222/2007 was elected as Vice-Chairman of the same Municipal Board. The total number of the Municipal Board are 25, three are nominated members and one is local M.L.A. and is Member of the Board by virtue of his office. Out of above Members, 14 Members of the Board submitted two notices of intention to make the Motion of No Confidence in Chairman and Vice-Chairman-the petitioners on 11.12.2006. Initially this notice was submitted before the Addl. District Collector, Chittorgarh, who directed to put the notice before the District Collector, Chittorgarh on the same day. On 14.12.2007, the learned District Collector, Chittorgarh, after considering the said notice, observed that since the copy of Motion of No Confidence, which is proposed by the Members, has not been annexed with the notice, therefore, no date can be fixed for consideration of any No Confidence Motion. Immediately on 14.12.2007 itself, a copy of the resolution which

was dated 13.12.2006 signed by 14 Ward Members, was submitted before the learned District Collector, Chittorgarh. On receipt of the Motion of No Confidence against the Chairman and Vice-Chairman-the petitioners, the District Collector decided to issue notice for consideration of No Confidence on 15.12.2006. The notices were sent to the 26 Members who were eligible to vote on No Confidence Motion. However, a notice was also issued to the Member of the Parliament but that was withdrawn by the District Collector, Chittorgarh vide letter dated 6.1.2007 on the ground that since the Municipal Board of Rawatbhata is neither a Council nor a Corporation, therefore, the Member of the Parliament is not Member of the Municipal Board and, therefore, the notice issued to the Member of Parliament by which the meeting was conveyed for consideration of No Confidence Motion, is withdrawn. The meeting was convened on schedule date 8.1.2007 and it was attended by total 19 Members of the Board. Out of 19 Members, 18 Members were elected Members and one is Member of Legislative Assembly. All the 18 Members voted in favour of the No Confidence Motion and the M.L.A did not cast his vote. In view of the said decision of the Members of the Board for carrying No Confidence Motion against both the petitioners, the Collector's representative, the

Sub-Divisional Officer, Rawatbhata declared that the Motion stands carried.

The contention of the petitioners in the writ petitions as originally submitted, is that there are 25 members of the Municipal Board, Rawatbhata representing 25 Wards of the municipal area of Rawatbhata. As per law, the Member of the Parliament and the Member of the Legislative Assembly of Rawatbhata area are also Members of the Board. Therefore, according to original pleading of the petitioners, total strength of the Board is thus 27. (In rejoinder the petitioners increased this number 27 to 29 by adding 3 nominated Members and deleted M.P.) According to both the petitioners, few members of the Municipal Board had political grudge against the petitioners who instigated other members of the Board against both the petitioners for bringing Motion of No Confidence against Chairperson and Vice-Chairperson. The petitioners' contention is that none of the Member of the Municipal Board ever shown his intention for bringing No Confidence Motion against the Chairperson and Vice-Chairperson and there was no dissatisfaction towards the work and discharge of duties by the petitioners as Chairperson and Vice-Chairperson of the Municipal Board. The petitioners, without

disclosing the date, when he came to know about submitting representation before the Collector by the Members of the Municipal Board, stated that the petitioners came to know that few Members of the Municipal Board submitted a representation before the District Collector on 13.12.2006 purporting to be intention to make Motion of No Confidence against the petitioners-Chairperson and Vice-Chairperson of the Municipal Board, Rawatbhata. The petitioners came to know that on 15.12.2006, the District Collector, Chittorgarh issued notice to convene meeting of the Members of the Municipal Board, Rawatbhata for consideration of said Motion of No Confidence. Both the petitioners received the notice dated 15.12.2006 issued by the District Collector and copy of the proposed Motion of No Confidence in them. The petitioner in para 9 of the writ petition stated that notice was given to all 27 Members of the Board. Both the petitioners admitted that the Sub-Divisional Officer, Rawatbhata was nominated to preside over the meeting on behalf of the Collector and further stated that the meeting was held as per schedule in meeting hall of the Municipal Board, Rawatbhata on 8.1.2007 at 11 a.m. and. According to both the petitioners, in the Motion of No Confidence, there were no allegations and/or grounds mentioned disclosing grounds for the No

Confidence of the Members in the petitioners. Hence, there was nothing which the petitioners could have clarified to the Members during consideration of the Motion of No Confidence. Both the petitioners did not attend the said meeting and they have not given any reason for not attending the meeting in which the Motion of No Confidence carried with the vote of all Members present.

According to the petitioners, as per Rules, the Rajasthan Municipalities (Motion of No Confidence against the Chairman or Vice-Chairman) Rules, 1974,the District Collector was under obligation to consider whether the notice is in appropriate form as submitted under the Rules of 1974 and whether the notice discloses grounds/reasons for resentment giving rise to 'No Confidence' in Chairperson or Vice-Chairperson. On finding that notice discloses grounds/reasons for resentment giving rise to 'No Confidence' in Chairperson and Vice-Chairperson then only the District Collector could have decided to convene the meeting and could have issued notice for consideration of No Confidence Motion by the Members of the Municipal Board. According to the petitioners, if there is no such material is furnished along with the notice to the Members then there will be nothing to be considered by the Members in the meeting and consequently, there cannot

arise any question of vote in favour or against Motion of No Confidence in Chairperson or Vice-Chairperson. It is further submitted in the writ petitions that in that situation, the Chairperson/Vice-Chairperson would have also nothing to demonstrate to the Members or could have clarified/justified so as to appeal against the Motion. According to the petitioners, the District Collector, Chittorgarh ignoring all these aspects, mechanically issued notice Annx.P.1 dated 15.12.2006.

It is further pleaded that the notice Annex.P.1 was not served upon all the Members of the Municipal Board but to genuine apprehension of the petitioners, it was got served upon only those Members who assured support for the Motion against the petitioners. According to the petitioners, this fact is fortified from the fact that no other than 18 Members of the Municipal Board who gave their vote in favour of Motion, only local M.L.A. reached to attend the meeting. In view of the fact that all 18 Members gave their vote in favour of No Confidence Motion, therefore, the petitioners have apprehension that the notice Annx.P.1 was not served upon other Members who were not in favour of the Motion of No Confidence against the petitioners.

It will be worthwhile to mention here that both the

petitioners who were served with the notice without disclosing any reason why they did not attend the said meeting which was convened for consideration of No Confidence Motion against them, merely stated that the petitioners did not attend the meeting. The one of the reasons which can be gathered from the pleadings of the petitioners is that since the notice Annex.P.1 did not disclose any ground for No Confidence of Members in the petitioners, therefore, the petitioners could not have said anything nor could have given any explanation. Though it is not stated as such in the writ petitions and if this was not the reason then there is no reason given by the petitioners why they did not attend the meeting dated 8.1.2007 wherein the No Confidence Motion was carried against them.

Be it as it may be, as per the petitioners, the petitioners when came to know about the Motion carried against them, they approached the Sub-Divisional Officer, Rawatbhata for obtaining the copies of the proceedings of the meeting of No Confidence Motion dated 8.1.2007 but that was not provided to both the petitioners. In these circumstances, the petitioners have challenged notice Annx.P.1 dated 15.12.2006 as well as carrying of Motion of No Confidence against both the petitioners but without

submitting the resolution passed carrying the Motion of No Confidence.

One of the Members of the Municipal Board Ganga Ram submitted an application for becoming party in the writ petition No.221/07, which was allowed by this Court vide order dated 15.2.2007. One Dheeraj Panwar and another Lekh Chand submitted applications for becoming party but they withdrew their applications and, therefore, they are not impleaded as party in the writ petition.

The respondent-State filed reply to the writ petition in detail and stated that as per sub-rule (1) of Rule 3 of the Rules of 1974, a written notice of intention to make Motion of No Confidence in Chairman/Vice-Chairman, signed by 1/3 Members of the Board together with copy of the Motion which was proposed by the Members, was submitted and thereafter the District Collector issued notice to all the 27 Members and No Confidence Motion was carried by vote of 2/3rd Members. With passing of the resolution on 8.1.2007,the office of Chairperson and Vice-Chairperson became vacant automatically. The State Government handed over charge of the Chairperson to Smt. Pushpa Devi by order dated 12.2.2007 who took the charge and oath on 12.2.2007. The copy of

this order dated 12.2.2007 and joining of Smt. Pushpa Devi are placed on record as Annx.R/3 and R/4.

The respondent no.5 submitted reply to the writ petitions and placed on record copy of the resolution dated 8.1.2007 by which both the petitioners were removed from the post of Chairperson and Vice-Chairperson of the Municipal Board, Rawatbhata, as well as the copy of the notice given by the Members of the Municipal Board to the District Collector, Chittorgarh and resolution dated 13.12.2006 which was submitted to the District Collector on 14.12.2006 and copy of the objection submitted before the Sub-Divisional Officer, Rawatbhata pointing out that the Member of the Parliament is not the Member of the Municipal Board, Rawatbhata. The respondent no.5 also placed on record the order of the State Government dated 12.12.2006 by which charge of the Chairperson was handed over to Smt. Pushpa Devi, Member of the Municipal Board, Rawatbhata. The respondent no.5 relied upon the Division Bench judgment of this Court delivered in the case of Premraj Bohra & ors. vs. Jairoopa & ors. (2003(1) WLC(Raj.) 495), (in which I was also party to the judgment), wherein this Court held that the nominated members have no voting right. The said judgment delivered in the case of

Premraj Bohra and in connected matters, was challenged by preferring Special Appeal before the Hon'ble Supreme Court and Hon'ble the Supreme Court in connected matter -Ramesh Mehta v. Sanwal Chand Singhvi and others ((2004) 5 SCC 409) held that nominated Members are not entitled to vote on Motion of No Confidence and they cannot be counted for determining the total strength of the Members of the Municipal Board. Respondent no.5 submitted that since the resolution dated 8.1.2007 carrying No Confidence Motion was not submitted by the petitioners in the writ petitions, therefore, the writ petitions may be dismissed only on this ground. Respondent no.5 further explained that total strength of Municipal Board, Rawatbhata for the purpose of consideration of No Confidence Motion is 26 (25 Ward Members + one M.L.A). 2/3rd of total strength is 18 only. On 11.12.2006, 14 Members of the Board gave a notice to the District Collector, Chittorgarh for convening meeting for consideration of No Confidence Motion against both the petitioners. Since the District Collector himself was not available in the office at relevant time, therefore, the notice was submitted before the Addl. Collector who forwarded it to the District Collector. Since the proposed Motion of No Confidence was not annexed with the notice given to the District

Collector, therefore, the District Collector vide order dated 14.12.2007 held that in absence of copy of proposed No Confidence Motion, no date can be fixed for convening the meeting for consideration of No Confidence Motion against the petitioners. On the same day, the Members of the Board submitted the proposed No Confidence Motion to the District Collector and thereafter only, the District Collector decided to convene meeting for consideration of No Confidence Motion against the petitioners. The notices were issued by the District Collector in accordance with the Rules of 1974 to all the Members of the Board except to the Member of Parliament to whom there was no necessity of giving notice as he was not Member of the Board. The notices were served upon all the Members of the Municipal Board and, thereafter, 18 Members attended the meeting on 8.1.2007 and the impugned resolution was passed and there is no illegality in it.

The petitioner in the writ petition no.221/07 submitted rejoinder to the reply filed by the respondent-State and to the reply filed by the respondent no.5. In rejoinder, the petitioner raised few more grounds which were not stated in the original writ petition. In rejoinder, the petitioner submitted that Rules of 1974 provides Motion of No Confidence against the Chairman ***or*** Vice-

Chairman and Rules of 1974 are not Rules for No Confidence Motion against the Chairman ***and*** Vice-Chairman. In view of this difference, there could not have been one Motion of No Confidence against both Chairman and Vice-Chairman. According to the learned counsel for the petitioners, there should have been separate No Confidence Motion, one against the Chairperson and another against the Vice-Chairperson and since there is only one No Confidence Motion, may it be against both the petitioners, therefore, it was not in accordance with the law and, therefore, the District Collector should not have issued notice for convening the meeting of the Board for consideration of Motion of No Confidence in petitioners.

In addition to above, the learned counsel for the petitioners submitted that as per the information, in fact there is only Motion of No Confidence on the record of the District Collector and there is no notice with which that Motion was required to be annexed as required under sub-rule (1) of Rule 3 of the Rules of 1974. The learned counsel for the petitioners relied upon the observations of this Court made when this Court considered the prayer for grant of interim relief and granted interim relief by observing that "...it transpires that in the record there is only a Motion of No

Confidence, and there is no notice with which that Motion was required to be accompanied.....". According to the learned counsel for the petitioners, the defect is fatal. Sub-rule (1) of Rule 3 of the Rules of 1974 clearly provides that a written notice of intention to make Motion of No Confidence in the Chairman or Vice-Chairman signed by one-third Members of the Board together with a copy of the Motion which is proposed to be made, is required to be sent to the Collector of the District. In case of not giving copy of the Motion or written notice of intention of the Members to make Motion of No Confidence to the District Collector then the entire proceeding vitiates. The learned counsel for the petitioners further submitted that in fact the District Collector by its order dated 14.12.2006 (Annx.P.3 submitted by the petitioner along with the rejoinder to the reply of the State and Annx.P.6 submitted along with rejoinder to the reply of respondent no.5), clearly held that the notice submitted by the Members of the Municipal Board to the District Collector dated 11.12.2006 was not in accordance with the Rule 3(1) of the Rules of 1974, therefore, thereafter the District Collector had jurisdiction to issue notice convening the meeting of the Board for consideration of No Confidence Motion. The learned counsel for the petitioners also

submitted that the different copies of the notice given to the Collector for convening the meeting placed on record are different and, therefore, it appears that that notice was fabricated subsequently. It is also submitted that the notice Ex.P.2 or Ex.P.5 were not given to the District Collector, Chittorgarh but were presented before the Addl. Collector, Chittorgarh which is apparent from the endorsement made by the Addl. Collector. Therefore, rule 3(1) of the Rules of 1974 has not been complied with and the District Collector had no jurisdiction to issue notice.

The learned senior counsel appearing for respondent no.5 Shri L.R. Mehta vehemently submitted that the complete procedure was followed and when a notices dated 11.12.2006 were submitted before the District Collector,Chittorgarh, as required under rule 3(1) of the Rules of 1974, the learned District Collector vide order dated 14.12.2006 held that till the copy of the No Confidence Motion is not annexed with the notice, the date for convening the meeting cannot be fixed. When the District Collector, Chhitorgarh passed the order dated 14.12.2006, the Members of the Board immediately on the same day, submitted copy of the No Confidence Motion before the District Collector and upon which the learned District Collector issued notice to all the

Members of the Municipal Board on 15.12.2006. The petitioners themselves placed on record copy of the notice issued by the District Collector, Chittorgarh which were served upon both the petitioners and the petitioners also have placed on record the resolution which was submitted for consideration of the Members of the Municipal Board dated 13.12.2006. It is also submitted that it is clear from Annex.1 itself that notices were given to all the Members of the Board. According to the learned counsel for the respondent, it appears that the petitioners successfully mislead this Court by stating that there is only Motion of No Confidence on the file of the District Collector or Motion alone was submitted to the District Collector but no notice was given to the District Collector for convening the meeting as required by sub-rule (1) of Rule 3 of the Rules of 1974. The above fact is contrary to the document placed on record by the petitioners themselves and also factually wrong as per record which is before this Court brought by the counsel for the State in pursuance of the order of this Court dated 23.3.2007.

The learned counsel for the respondent further submitted that the legal position is clear in view of the Division Bench judgment of this Court delivered in the case of Premraj Bohra

(supra) and which was upheld by the Hon'ble Supreme Court in its detail judgment delivered in the case of Ramesh Mehta (supra) and nominated Members have no voting right and are not entitled to participate in meeting convened for consideration of No Confidence Motion. This Court may peruse the entire record of the District Collector to find out whether notices have been served upon all the Members personally or not and as per the respondent's information, notices were served upon all the Members. The learned counsel for the respondent also submitted that the petitioners misconstrued the Rules of 1974 when it is stated that because of the use of word “or” in “Motion of No Confidence against Chairperson or Vice-Chairperson”, there cannot be one No Confidence Motion against the Chairperson and Vice-Chairperson. The learned counsel for the respondent submitted that the counsel for the petitioners before this Court in his argument clearly admitted that there can be one meeting for consideration of No Confidence Motion against the Chairman and Vice-Chairman, then in that situation, the objection raised by the petitioners, which is not supported by any provision of law is also absolutely technical in nature. It is submitted that the notice and Motion of No Confidence of Members of the Municipal Board is sufficient if it is in writing

and convey the intention of the makers that they have no confidence in the Chairperson and Vice-Chairperson. This was clearly understood by both the petitioners. It is also submitted that there is no allegation that the meeting was not convened or Motion was not put for consideration of the Members or the Members have not gave their vote in favour of the Motion, then in that situation, there arises no question for interference by this Court in the resolution carried out by the majority of the Members of the Municipal Board removing the Chairperson and Vice-Chairperson. The learned counsel for the respondent relied upon the judgment of this Court delivered in the case of Bhurekhan vs. The State & 14 others (1976 WLN 73).

I considered the submissions of the learned counsel for the parties and perused the record of the writ petitions as well as the original record brought by the learned Govt. Advocate wherein proceeding of no confidence motion were taken.

The contention of the petitioners is that a written notice of intention to make Motion of No Confidence in Chairman and Vice-Chairman along with the copy of the Motion proposed by the members was not submitted before the District Collector and the District Collector merely on the basis of the Motion of No

Confidence, decided to convene the meeting for consideration of no confidence motion. This contention appears to be wrong in view of the fact that in the learned District Collector's order dated 14.12.2006 it is mentioned that the Members of the Board submitted the notice for convening the meeting for consideration of No Confidence in the petitioners. The original record also discloses that first 14 Members of the Board gave two separate notices, as required by sub-rule (1) of the Rule 3 of the Rules of 1974 to the Addl. District Collector stating that Chairman and the Vice-Chairman have lost support of majority of Members of the Board, therefore, steps be taken in accordance with law. These notices were submitted without annexing any copy of the proposed Motion. Those notices alone were not sufficient for acting upon by the District Collector under sub-rule (2) of Rule 3 of the Rules of 1974, therefore, the District Collector ordered on 14.12.2006 that no date can be fixed for convening the meeting of the Board merely on submitting notice for calling meeting for consideration of Motion which has not been submitted by the Members of the Board. Then, a resolution was passed by the Members of the Municipal Board on 13.12.2006 (Annx.R.4/2). The language used by the District Collector in its order dated 14.12.2006 is very clear

and the District Collector had not rejected the notice of no confidence for want of compliance of sub-rule (1) of Rules of 1974. The learned counsel for the petitioners also during course of arguments admitted that the notice or the Motion of No Confidence were not rejected by the District Collector and the learned Collector only held that no meeting for consideration of No Confidence Motion can be convened. It appears, faced with the order dated 14.12.2006, Members of the Municipal Board submitted a Motion of No Confidence itself before the District Collector and that was considered by the District Collector and the District Collector decided to convene the meeting for consideration of No Confidence Motion and issued notice under sub-section (2) of Section 3 of the Rules of 1974. The record discloses that the notice issued by the District Collector along with the resolution was sent to all the Members and they have been received personally by the Members of the Board including both the petitioners of both the writ petitions who were holding the posts of Chairman and Vice-Chairman.

The learned counsel for the petitioners also submitted that the notices which were submitted before the Addl. District Collector and which were forwarded to the District Collector, were

signed by one Keshar Kanwar also who is Member of the Board. Her signatures on these notices and her signatures on resolution dated 8.1.2007 are entirely different and, therefore, it appears that Keshar Kanwar's signatures have been inserted in the resolution dated 8.1.2007 subsequently or are forged one. This plea was not taken by the petitioners in the writ petitions. Be it as it may be, the petitioners did not submit affidavit of Keshar Kanwar in support of this contention. The petitioners have not stated that Keshar Kanwar signs only in one way. It appears that the petitioners merely because of difference in signatures of Keshar Kanwar on two documents, inferred that Keshar Kanwar must not have signed the resolution dated 8.1.2007.

The another contention of the petitioners that 2/3rd Members of the Board have not voted in favour of the Motion of No Confidence, is on the basis of misinterpretation of law and contrary to the Division Bench judgment of this Court delivered in the case of Prem Raj Bohra & ors. Vs Jairoopa & Ors. (2003(1) WLC 495), which has been upheld by the Apex Court after detail consideration, in the case of Ramesh Mehta v. Sanwal Chand Singhvi ((2004) 5 SCC 409). It is clear from the facts as pleaded by the petitioners themselves, there are 25 elected Members of the

Board. One M.L.A. is also Member of the Board.These 26 Members were eligible voters and 3 nominated Members could not have participated in the meeting nor had voting right. 18 Members constitute the 2/3rd Members of the Board and they voted in favour of the No Confidence Motion, therefore, the No Confidence Motion dated 8.1.2007 is not vitiated on this count. The petitioners were knowing it well, therefore, in the writ petitions they clearly stated that there are only 27 Members in the Board and did not include the nominated Members of the Board in total strength of the Members of the Board. The petitioners in rejoinder took new plea about want of requisite number of votes for carrying the Motion. The plea is contrary to law laid down by the Division Bench of this Court in Prem Raj Bohra's case (supra) as well as, as laid down by the Hon'ble Supreme Court.

The petitioners contended that in the Motion of No Confidence, there were no reasons given and, therefore, the District Collector could not have convened the meeting for consideration of Motion of No Confidence against both the petitioners as there was nothing to be considered by the Members of the Board. The argument is devoid of any force. There is no specific language prescribed of No Confidence Motion. There is no

need to give reasons by the Members for showing No Confidence in the Chairman or the Vice-Chairman. The Members of the Board can straight way on the basis of their own satisfaction, and as per their own decision, can convey that they have no confidence in the Chairman and/or Vice Chairman of the Board. The consideration of No Confidence is not a holding enquiry about the allegations against the Chairman or Vice-Chairman for the purpose of removal from the post of Chairman or Vice-Chairman. A one line Motion of No Confidence for removal of elected Chairman or Vice-Chairman may be a valid Motion of No Confidence. The District Collector has no jurisdiction to examine the grounds and reasons for lack of confidence of the Members of the Board in the Chairman and Vice-Chairman. The District Collector has no jurisdiction to reject the notice of No Confidence Motion or the Motion on the ground of absence of reasons or grounds in Motion for submitting No Confidence Motion. Once a notice of intention to make Motion of No Confidence in the Chairman or Vice-Chairman, signed by the requisite number of Members (1/3rd) together with copy of the Motion, is submitted before the District Collector, he has no option but to convene the meeting for consideration of Motion of No Confidence by the Members only. Consideration of No Confidence

by the Members of the Board in the meeting convened by the District Collector under sub-rules 5 and 6 of the Rules of 1974 does not mean that in said meeting convened for consideration of No Confidence Motion, the Board should take a decision on any allegation levelled against the Chairman and Vice-Chairman of the Municipal Board. It is only for giving opportunity to all the Members of the House to have full deliberation so that the Members may convince each other and themselves about to take a decision of showing confidence and no confidence in the Chairman and the Vice-Chairman. Sub-rule (7) of rule 3 of the Rules of 1974 clearly provides that on the conclusion of the debate or upon expiry of the period prescribed by sub-rule (6) of rule 3 of the Rules of 1974, the Motion shall be put to the vote of the Board. It is not an enquiry on charge against the said persons holding the said posts. In view of the above, I do not find any merit in the submissions of the learned counsel for the petitioners on this count.

The learned counsel for the petitioners also argued that one Motion of No Confidence for removal of Chairman and Vice-Chairman both, is illegal. In support of that, the learned counsel for the petitioners could not point out anything more than the use of word '**OR**' used in between the language used in the heading of

the Rules and in sub-rule (1) of Rule 3 as used in the Rajasthan Municipalities (Motion of No Confidence against Chairman **or** Vice-Chairman) Rules, 1974. According to the learned counsel for the petitioners, since word 'or' has been used in between the words Chairman and Vice-Chairman, therefore, Motion of No Confidence against the Chairman and Vice-Chairman should have been separate. The said argument of the learned counsel for the petitioners is because of misconstruing the Rules of 1974 and word '**or**' which has also been used in sub-rule (1) of rule 3 in between the words Chairman and Vice-Chairman. When the Members of the Board decides to show their no confidence in both the Chairman and Vice-Chairman then that can be done by one notice and one resolution. The object of sub-rule (1) of Rule 3 of the Rules of 1974 is to make known to all including affected persons that the Members have shown their no confidence in the persons named in the motion holding the post. By joining two names in one Motion of No Confidence and one notice of intention to make Motion of No Confidence, no prejudice can be caused to the either of the Members of the Board or to the Chairman or the Vice-Chairman. It is also not the case of the petitioners that any prejudice has been caused to them.

The writ petitions of the petitioners deserve to be dismissed only on the ground mentioned above as the petitions have been filed on wrong facts but the facts require further consideration. Both the petitioners stated on oath that the Motion of No Confidence was not reasoned and there were no allegations against the petitioners and, therefore, the learned District Collector should not have issued notice convening meeting of the No Confidence Motion. If the petitioners were so sure about their conviction then there was no reasons for the petitioners for not attending the meeting convened for consideration of No Confidence Motion moved against them. The petitioners themselves by mere their word of mouth or even by their argument in support of their this plea that the Motion of No Confidence contains no reasons and, therefore, why to vote in favour of the Motion could have got the Motion fail. An elected Member of Municipal Board is representative of public and is also voice of the people to whom he represents. There is no reason for the petitioners for ignoring the notice and Motion of No Confidence moved by 1/3rd Members of the Board against the petitioners. In the writ petition, virtually this is the only ground raised by both the petitioners that No Confidence Motion contained no ground and

reasons for having no confidence of the Members in the petitioners. In peculiar facts, as stated above, the petitioners themselves by their willful absence became party became party to resolution. The petitioners in the writ petitions very boldly stated that they did not attend the meeting convened for consideration for Motion of No Confidence despite service of the notice upon them in time. Whether in such circumstances, the petitioners could have objected to the resolution which was passed without their raising any objection in time, which according to the petitioners, they could have avoided against the petitioners ? In my opinion, the petitioners cannot have better right than a person who himself took chance or who did not object to the proceeding by willful absence and by that allowed the Motion to pass. The petitioners are not entitled to invoke equitable jurisdiction under Article 226 of the Constitution of India in view of their conduct. It is true that the elected Members cannot be removed illegally and strict adherence to the statutory rules is required in the matter of consideration of Motion of No Confidence but that does not mean that this can give a legitimate right to person to become party to resolution by his conduct and thereafter challenge the resolution.

In view of the above reasons, both the writ petitions are dismissed with cost of Rs.10,000/- on each of the petitioners and in favour of respondent nos.1 to 4.

(**PRAKASH TATIA),J.**

mlt.